

Part I

Financial Institutions, Commercial Law, and Corporations

Financial Institutions

Credit Unions – Insurance of Share and Deposit Accounts

Current law requires each State-chartered credit union to be insured by either the Credit Union Insurance Corporation (CUIC), a nonprofit nonstock corporation established under State law, or the National Credit Union Administration Fund, administered by the National Credit Union Administration. CUIC, which currently insures the share and deposit accounts of 5 of the 11 State-chartered credit unions, is interested in dissolving if an alternative private insurer is authorized to insure the share and deposit accounts of Maryland credit unions.

Accordingly, Chapters 147 and 148 of 2001 charged the Task Force to Study the Modernization of Credit Union Law with making recommendations about the dissolution of CUIC, and the policy and standards for the regulation, by the Commissioner of Financial Regulation, of credit union share guaranty corporations that seek to insure the member accounts of credit unions regulated by the commissioner. *Senate Bill 776/House Bill 728 (both passed)* reflect the recommendations of the task force.

To ensure the orderly dissolution of CUIC, the bills prohibit CUIC from accepting applications for new membership from credit unions on or after the date the commissioner issues a certificate of authority to act as a credit union share guaranty corporation. Credit unions insured with CUIC are required to obtain alternative primary deposit guaranty insurance, from National Credit Union Administration Fund or a credit union share guaranty corporation regulated by the commissioner, within two years after the date a credit union share guaranty corporation obtains a certificate of authority from the commissioner. Under the bills, CUIC must dissolve within two years after it no longer has any members and, after discharging any existing debts and obligations, must

transfer its remaining assets to a nonprofit corporation exempt from federal taxation and organized to promote and publicize the interest and welfare of credit unions.

Senate Bill 776/House Bill 728 also establish a new regulatory scheme administered by the commissioner under which private credit union share guaranty corporations are allowed to operate in Maryland. The bills require a person to obtain a certificate of authority from the commissioner before acting as a share guaranty corporation in the State and establish qualifications to obtain a certificate of authority and procedures for applying for, and issuing or denying, a certificate of authority. Under the bills, a share guaranty corporation is required to have a written contract with each participating credit union that establishes the rights and obligations of the parties. Share guaranty corporations must insure and guaranty the share and deposit accounts of each participating credit union to at least the same extent and amount as provided under National Credit Union Administration Fund; pay an annual assessment; file annual and interim reports with the commissioner; and maintain a guaranty fund that includes reserves for guaranty losses. The commissioner is required to examine the business of each share guaranty corporation at least every 24 months, and may examine the business at any time the commissioner reasonably considers necessary.

To enforce the provisions of *Senate Bill 776/House Bill 728*, the commissioner is authorized to: (1) suspend or revoke a certificate of authority of a share guaranty corporation if the corporation or an officer or director of the corporation commits specified violations; (2) issue cease and desist orders; (3) impose civil penalties; and (4) file a petition in circuit court to seek enforcement of an order of the commissioner. Criminal penalties also are established for violations of the bills.

Maryland Money Transmission Act

Maryland's money transmission law, first enacted in 1959, applies to nonbank issuers of payment instruments, such as money orders and travelers checks, and to fund transmitters. While money orders still make up a substantial portion of all transactions regulated under the law, a number of changes have occurred in the industry since its enactment, including a rapid increase in actual money transmissions to domestic and foreign locations, the use of informal money transfer systems, such as hawalas, and a proliferation of unlicensed Internet money transmitters.

Senate Bill 774/House Bill 715 (both passed) modernize and strengthen the provisions of Maryland's money transmission law to more effectively regulate the current money transmission industry. The bills expand the types of money services that are required to be licensed to include bill payer services, accelerated mortgage payment services, informal money transfer systems outside the conventional financial institutions system, and money transmissions conducted over the Internet.

The bills alter the qualifications for a license by requiring an applicant to: (1) have good moral character and sufficient financial responsibility to engage in the business of money transmission; (2) maintain required permissible investments; (3) have a net worth of at least \$150,000 plus an additional net worth of \$10,000 for each additional business location or authorized delegate; and (4) have at least three years experience in the business of money transmission. The bills also alter the application process by requiring an applicant to provide fingerprints for a criminal history records check and increase the application and investigation fees.

Under *Senate Bill 774/House Bill 715*, licensees are required to file evidence of a surety device with the commissioner, comply with detailed reporting and record keeping requirements, and obtain prior approval of the commissioner for a change in control or business location. The bills also impose additional requirements on authorized delegates of a licensee and specify the circumstances under which the commissioner may order a licensee to terminate its relationship with an authorized delegate.

To enhance the commissioner's enforcement and investigation powers, the bills clarify the circumstances under which the commissioner may suspend or revoke licenses and authorize the commissioner to enter into cooperative and information sharing agreements with federal or state supervisory agencies, conduct on-site examinations of licensees or authorized delegates with no prior notice, and impose civil penalties. Criminal penalties also are established.

Finally, the bills create a Money Transmission Fund consisting of any fees received under the bills, to be used to pay all the costs incurred by the commissioner related to regulating the business of money transmission.

Commercial Law

Commercial Law – Generally

Uniform Commercial Code

Chapter 282 of 1999 significantly revised Title 9 of the Maryland Uniform Commercial Code (UCC) as adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). One of NCCUSL's revisions, adopted by Maryland in Chapter 282, broadened the definition of a "payment intangible" to include most obligations to pay money that do not fall into one of the specifically excluded categories of collateral. This includes rights to receive workers' compensation benefits, structured settlement benefits received for physical injuries or sickness, and trust benefits. *Senate Bill 631/House Bill 888 (both passed)* exempt from the assignable payment rights under Title 9 of the UCC:

- claims or rights to receive compensation for physical injuries or sickness under:
 - a worker's compensation claim; or
 - damages received because of physical injuries or sickness, whether by suit or agreement or whether as lump sums or periodic payments; and
- income from a special needs trust for disabled individuals where all or, under specified circumstances, part of the trust is paid to the State upon the death of the individual.

Dishonored Checks or Instruments

When a check or other instrument has been dishonored by nonacceptance or nonpayment and has not been paid within ten days, the holder to whom the instrument was issued may send a notice of dishonor to the maker or drawer of the check or other instrument. *Senate Bill 119/House Bill 182 (both passed)* authorize the holder of a dishonored check or other instrument, as an alternative to obtaining a certificate of mailing from the U.S. Postal Service, to execute an affidavit that attests to the mailing of a notice of dishonor.

Budget Reconciliation and Financing Act

Bank accounts and other assets held in Maryland are presumed to be abandoned and transferred to the State after expiration of a specified statutory period; however, a citizen may apply to reclaim them at any time. *Senate Bill 323 (passed)*, the Budget Reconciliation and Financing Act (BRFA), reduces the period for presumption of abandoned property from five to four years. In fiscal 2004 and thereafter, the bill reduces the period for presumption of abandoned property from four to three years. As a result, additional bank account funds and other assets would transfer to the State. These revenues can only be captured once, so there is no fiscal impact beyond fiscal 2004. The additional revenues would be offset by an indeterminate, but proportionally smaller, increase in the number of applications for reclaimed property. For a more detailed discussion of BRFA, see the subpart "Operating Budget" under Part A - Budget and State Aid of this *90 Day Report*.

Consumer Protection

Service Contracts

Service contracts have generally been governed by the common law of contracts, the insurance law, or under special statutory provision regarding mechanical repair contracts. However, concerns have arisen about consumers' ability to enforce service

contracts. *Senate Bill 543/House Bill 863 (both passed)* establish the Maryland Service Contracts and Consumer Products Guaranty Act. The bills require a service contract to be in writing and to specify: (1) the contract's duration, measured in time or product usage; (2) any reasonable and necessary maintenance required to be performed by the person guaranteed as a contract condition; (3) the contract's purchase price and terms, including the provider's obligations; (4) the merchandise and services to be provided; (5) the procedures to follow to obtain services under the contract or to file a claim under the contract; (6) limitations, exceptions, or inclusions under the contract; (7) the terms, restrictions, or conditions governing cancellation of the contract before its stated termination date; and (8) any means established by the provider for quick informal settlement of a dispute.

Unless the consumer cancels the contract, *Senate Bill 543/House Bill 863* also require a service contract provider to fulfill the obligations under the contract according to its terms: (1) for the contract's stated duration; and (2) within the contractually stated period or, if none is stated, a reasonable period. A service contract is extended automatically if the provider fails to perform the services as required. The contract does not terminate until the services are provided.

Senate Bill 543/House Bill 863 require a service contract provider to give the person guaranteed under the contract a brief written explanation if the provider is unable to fulfill the terms of the service contract within ten days after the services should have been performed under the contract. These duties may not be imposed on a service contract provider if the provider shows that while the product was in the possession of any other person, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance, caused the product to malfunction or caused the inability of the provider to provide any service under the contract.

Electronic Commerce

The electronic commerce movement has given Marylanders new ways to engage in buying and selling consumer goods. However, incidents of fraud have interfered with such commerce. *Senate Bill 538/House Bill 915 (both passed)* prohibit a person from initiating, conspiring to initiate, or assisting in the transmission of a commercial electronic mail (e-mail) message that: (1) uses a third party's Internet domain name or e-mail address without permission; (2) misrepresents or obscures any information relating to the point of origin or transmission path of the message; or (3) contains false or misleading information in the subject line. The bills apply to commercial e-mail messages that are sent from a computer located in Maryland or to an electronic mail address that the sender knows or has reason to know is held by a resident of the State. Violators are liable to a recipient of the e-mail or a third party without whose permission the third party's domain name or e-mail address was used for attorney's fees and the greater of \$500 or actual damages. Violators are liable to an interactive service provider for attorney's fees and the greater of \$1,000 or actual damages.

Payment Device Privacy

Senate Bill 25 (passed) prohibits a person from printing on a receipt provided to a credit device holder more than the last eight digits of a credit card or other credit device number. The bill applies only to receipts that are electronically printed in connection with the purchase of consumer goods or services and excludes receipts where the sole means of recording the credit card or credit device number is by handwriting, imprinting, or copying the card or device. The bill is effective October 1, 2002, for receipts from machines that are first put into service on or after October 1, 2002. Receipts from machines in service before that date must comply by January 1, 2006.

Credit Regulation

Revolving Credit Plan Agreements

If the agreement governing a revolving credit plan (*e.g.*, a credit card, personal line of credit, open-ended home equity loan, overdraft protection) permits, a credit grantor may amend the terms of the agreement, including the interest rate or finance charge, the method of computing the outstanding balance, the amounts of other charges, and the applicable repayment schedule. ***Senate Bill 482/House Bill 438 (both passed)*** alter the provisions that govern such amendments by repealing: (1) the requirement that a credit grantor give notice to a borrower if the amendment alters the manner of the computation of interest, finance charges, or other fees and charges; (2) the requirement that a credit grantor send a second notice to a borrower if the amendment increases the interest, finance charges, or other fees and charges; and (3) the requirement that the Commissioner of Financial Regulation approve the form of the notice to the borrower. ***Senate Bill 482/House Bill 438*** also repeal the provision excluding extensions of credit secured by real property from the notice requirements applicable to amendments of credit agreements. The bills apply to amendments made on or after October 1, 2002.

Credit Services – “Payday” Lending

Under Maryland law, the maximum permissible annual interest rate for small loans (under \$6,000) varies with the amount of the loan, up to 33 percent. However, under federal law, a federally-insured depository institution, whether federal or state chartered, may charge the interest rate permitted in its home state to borrowers across state lines, regardless of the legal rate in the borrower’s state. A credit services business, operating in Maryland, may broker the transaction between a federally-insured depository institution as lender and a Maryland resident as borrower.

Credit Services Businesses: House Bill 1193 (passed) prohibits a credit services business, its employees, and its independent contractors from assisting a consumer to

obtain an extension of credit at an interest rate which, except for federal preemption, would be prohibited under the State's consumer credit provisions.

Support for Federal Legislation: *Senate Joint Resolution 7 (passed)* urges the Maryland Congressional Delegation to adopt legislation that would prohibit an insured depository institution from making a payday loan either directly or through an agent or affiliate.

Extensions of Credit

House Bill 649 (passed) imposes consumer protection provisions on high interest or high fee mortgage loans that are one percentage point less than the comparison percentages for loans issued under the federal Home Ownership Equity Protection Act. Specifically, *House Bill 649* prohibits a mortgage lender from financing single premium credit health, credit life, or credit involuntary unemployment benefit insurance as part of a loan, and from making loans without giving due regard to the borrower's ability to repay the loan in accordance with its terms. The bill also requires mortgage lenders to provide potential borrowers with a written recommendation that the borrowers seek home buyer education or housing counseling and information on where to obtain the counseling. Additionally, the bill provides that only the State may enact a law that purports to regulate extensions of credit made by a financial institution. The State preemption provision does not restrict or otherwise affect: (1) local laws that establish property ownership or the rights and obligations of property owners; (2) a local government's ability to regulate its fiscal, economic, or community development policy; (3) federal preemption of State law; (4) a local government's laws or regulations relating to fair housing or other civil rights; or (5) a local government's loan programs to assist residents with financial needs. The preemption provisions take effect June 1, 2002, while all other provisions take effect October 1, 2002.

Corporations and Associations

Limited Liability Companies

Membership and Activities

Since enactment of the Maryland Limited Liability Company Act of 1992, the limited liability company (LLC) has grown in popularity and has been used for a wider range of purposes than was originally anticipated. One new area of use is in the not-for-profit arena. In other states, LLCs are used as the vehicle through which tax-exempt organizations can conduct activities related to or supporting their purposes. In Maryland, however, it is not clear that an LLC can be used for not-for-profit purposes.

House Bill 379 (passed) alters Maryland's Limited Liability Company Act to modernize the law and facilitate the use of LLCs for not-for-profit purposes. The bill broadens the purposes for which an LLC may be organized by authorizing an LLC to conduct activities related to any lawful activity, whether or not for profit, except the business of acting as an insurer. The bill also changes the current law requirement that a member must hold an economic interest in the LLC by expanding the current definition of a "member" to include a person who is admitted as a member, and allowing a person to be admitted as a member without making a contribution or acquiring an interest in the LLC. These changes are intended to ensure that a nonprofit LLC can qualify for tax-exempt status under the Internal Revenue Code, which prohibits the inurement to a member of any economic benefit derived from a tax-exempt organization. **House Bill 379** also alters the method for dissolving or winding up the affairs of an LLC, and establishes a mechanism for continuation of an LLC after it ceases to have any members.

The bill also allows commercial lenders who lend money to an LLC to take a noneconomic voting interest in the LLC and protects the lender's lien by ensuring that the LLC will continue in existence even if all the economic owners withdraw from the entity. The bill brings Maryland's LLC statute into conformity with the neighboring states of Delaware, Virginia, and North Carolina.

Mergers

House Bill 1357 (passed) authorizes a domestic, or Maryland, LLC to merge into one or more domestic or foreign LLCs, unless the operating agreement provides otherwise, and authorizes the merger of multiple foreign or domestic LLCs into a single domestic LLC. The bill also alters the manner in which a domestic LLC must approve a merger by requiring the consent of the members holding at least two-thirds of the interests in profits of the LLC.

Electric Cooperatives

Chapter 179 of 1976 decodified the "Electric Cooperative Act" of 1941 and transferred it to the Session Laws as part of the code revision process that created the Corporations and Associations Article. The Act includes provisions relating to formation and powers, members, officers, and directors, and the consolidation, merger, conversion, and dissolution of Maryland electric cooperatives.

In light of the restructuring of the electric utility industry and the anticipated increase in legislative activity in this area, Chapter 604 of 2001 required the Department of Legislative Services to prepare draft legislation that provides a nonsubstantive revision of Chapter 179 and transfers that revision to the Annotated Code of Maryland. In response to Chapter 604, **Senate Bill 129/House Bill 153 (both passed)** revise and restate the Electric Cooperative Act and recodify the law in the Corporations and Associations

Article. As directed by the legislature, no substantive changes are made in the bills, except that provisions relating to the names of electric cooperatives and filing of security instruments are revised to conform to the requirements of current law.